

The court also saw universal participatory access to the school board as a catalyst for inter-generational involvement with American education. The court stated:

It is of the greatest importance that the children of such persons should be educated, at least to the extent for which opportunity is afforded by our common schools, and that the parents should be induced to send their children to school, and it seems to us that they would be much more likely to do so, and to take interest in their attendance and improvement, if allowed to participate in their regulation and management, than if wholly excluded.³³⁴

Thus, just as schools furnish a "democratic education" for children, the opportunity to participate in the governance of schools furnishes a "political education" for their parents.³³⁵ The eloquent logic of this idea may explain why, despite the general demise of alien suffrage in large cities in this century, New York and Chicago permit alien voting in school board elections today.³³⁶

Our republican inheritance requires us to take seriously not only the principles of no taxation and no governance without representation, but the cultural and educational benefits associated with sharing the vote with all local "citizens." These benefits have to do with the increased dignity and self-esteem which follow not simply from voting, but also from having the right to vote, which is a foundation of social recognition upon which the alien can build. To exclude aliens from the local franchise is not only to deprive them of any political influence over government, but to deny them the benefits of "citizenship as standing."

Like other disenfranchised groups before them, aliens can often experience their life here as "members of a professedly democratic society that [is] actively and purposefully false to its own vaunted principles by refusing to accept [them] or to recognize their right to be voters."³³⁷ Immigrants who have come to the U.S. with great

³³⁴ *Id.* at 641.

³³⁵ See AMY GUTTMAN, *DEMOCRATIC EDUCATION* 287 (1987) ("Political education prepares citizens to participate in consciously reproducing their society, and conscious social reproduction is the ideal not only of democratic education but also of democratic politics . . .").

³³⁶ See ILL. REV. STAT. ch. 122, para. 34-2.1(d)(ii) (Supp. 1992); N.Y. EDUC. LAW § 2590-c(3) (McKinney Supp. 1993); see also *Ambach v. Norwick*, 441 U.S. 68, 77 (1979) ("Other authorities have perceived public schools as an 'assimilative force' by which diverse and conflicting elements in our society are brought together on a broad but common ground.").

³³⁷ SHKLAR, *supra* note 5, at 14.

While the globalizing process is fraught with danger for local communities,³⁴⁴ a great many cities have taken the offensive by asserting their right to be involved in the conduct of foreign policy and to govern the local effects of international relations.³⁴⁵ As Chadwick Alger writes, "people are becoming aware that the intrinsic character of a global issue is that it affects all human settlements. This being the case, it ought to be possible to act on the local manifestation of that issue."³⁴⁶ One important example of such action in the United States is the grass roots movement to offer sanctuary to refugees from war-torn countries like El Salvador and Guatemala.³⁴⁷

The move towards local noncitizen voting can be seen as part of the trend of communities accepting responsibility for participating in the enforcement of global human rights norms. In this sense, Takoma Park, Maryland, which recently enacted noncitizen voting, was only following up on its earlier decision to make itself a sanctuary city.³⁴⁸ After securing the right of Salvadorean and Guatemalan immigrants to live free from war and political persecu-

of *American Citizenship*, in *IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA* 51, 64-65 (William R. Brubaker ed., 1989) ("Transnational economic relationships are ubiquitous, international travel has become inexpensive, migratory pressures are already enormous and are steadily increasing, environmental problems are global, scientific and cultural exchange are highly valued, and political cooperation among nations is more essential than ever before.").

³⁴⁴ See, e.g., David C. Perry, *The Politics of Dependency in Deindustrializing America: The Case of Buffalo, New York*, in *THE CAPITALIST*, *supra* note 3, at 113 (describing Buffalo as a "victim of global economic change" by which industrial production shifts to the Third World, accomplishing a new international division of labor); Saskia Sassen-Koob, *Growth and Informalization at the Core: A Preliminary Report on New York City*, in *THE CAPITALIST CITY*, *supra* note 340, at 138, 151 (detailing the correspondence between economic disparity and the rise in "informalization," the trend toward illegal work and production, subcontracting, industrial homework, and sweatshops).

³⁴⁵ See Chadwick F. Alger, *The World Relations of Cities: Closing the Gap Between Social Science Paradigms and Everyday Human Experience*, 34 *INT'L STUD. Q.* 493, 495 (1990) (noting the "growing efforts in cities to respond to foreign policy issues . . . such as nuclear free zones, conversion of military production to peaceful uses, the struggle against apartheid, human rights, and foreign aid."); Shuman, *supra* note 32 at 158 (1992) (describing and approving the recent growth in community-based democracy which addresses foreign policy).

³⁴⁶ Alger, *supra* note 345, at 505.

³⁴⁷ See *id.* at 509-10.

³⁴⁸ See Recommendations of Takoma Park Elections Task Force 1-2 (stating that "Takoma Park's historic commitment to activist democracy and its status as a Sanctuary city" is consistent with "the concept of allowing all residents of Takoma Park, regardless of citizenship, to vote in city elections") (on file with author).

At any rate, local alien suffrage has made much headway in the last several decades, especially in Europe. In 1975 Sweden adopted voting rights in local and regional elections for foreigners living in the country for three years.³⁵⁴ In 1977 Denmark enacted a local alien suffrage policy for Nordic immigrants which has since been extended to give the right to vote and hold local office to all immigrants of three years residence.³⁵⁵ Norway changed its constitution to accomplish noncitizen voting in 1978, and now all immigrants of three years residence may vote.³⁵⁶ Both Finland and Iceland have extended local voting rights to Nordic citizens.³⁵⁷ The Netherlands accomplished local voting rights for all immigrants in the early 1980s.³⁵⁸ And, in Switzerland, two cantons have written local alien suffrage into their constitutions.³⁵⁹ A local alien suffrage provision has also appeared in the new Constitution of Estonia.³⁶⁰

But by far the most ambitious experiment in reciprocal local alien suffrage is contained in the proposed Maastricht Treaty on European Union.³⁶¹ Article 8b of the Treaty states that:

Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State.³⁶²

Although this policy will be limited to citizens of member nations, it would still mark an unprecedented and historic expansion of the

³⁵⁴ Jan Rath, *Voting Rights*, in *THE POLITICAL RIGHTS OF MIGRANT WORKERS IN WESTERN EUROPE* 127, 134-35 (Zig Layton-Henry ed., 1990).

³⁵⁵ *See id.* at 136.

³⁵⁶ *See id.*

³⁵⁷ *See id.* at 137.

³⁵⁸ *See id.* at 138.

³⁵⁹ *See id.* at 128.

³⁶⁰ Article 156 of the 1992 Constitution of Estonia provides that in the election of local governments, all persons at least 18 years old "who reside permanently within the territory of that governmental unit" shall have the right to vote). *See* ESTONIA CONST. ch. XIV, art. 156. There is, of course, an ongoing debate as to whether the new Estonian constitution's citizenship provisions are too strict. *See* Riina Kionka, *Estonia: A Difficult Transition*, 2 RFE/RL RES. REP. 89.

³⁶¹ The Treaty confers citizenship in the Union on all persons "holding the nationality of a Member State." Treaty on European Union, Feb. 7, 1992, art. 8, in COUNCIL OF THE EUROPEAN COMMUNITY, TREATY ON EUROPEAN UNION 15 (1992) [hereinafter Maastricht Treaty]. Unfortunately, the local voting provision contained in Article 8b has apparently elicited criticism in France. *See* William Drozdiak, *Despite Danish Rejection, EC to Pursue Unification*, WASH. POST, June 4, 1992, at A22.

³⁶² Maastricht Treaty, *supra* note 361, at 15.

to vote, or run for office, in any state election, and are therefore shut out from formal political participation at both the state and national level.³⁶⁹ There are, however, several important examples of noncitizen voting at the local level which can serve as models for interested localities. Since 1968, New York City has granted noncitizens who are the parents of school children the right to vote and run for community school board.³⁷⁰ The City of Chicago

presently permits the extension of the vote in local elections to noncitizens. In some states, such as South Carolina, it will probably be prohibited by the plain language of the constitution. See S.C. CONST. art. II, §§ 4, 5 (defining state electors as citizens and providing that "[m]unicipal electors shall possess the qualifications prescribed in this Constitution"). But in many states, such as Maryland, the constitution and state law is silent on the question of local electoral qualifications, and municipalities can therefore decide to enfranchise noncitizens as an aspect of their constitutional or legislative home rule power. See MD. CONST. art. I (omitting any reference to municipal elections).

³⁶⁹ Fifty-eight constitutions specify that "citizens" may vote in state elections. See, e.g., HAW. CONST. art. II, § 1 ("Every citizen of the United States who shall have attained the age of eighteen years . . ."); IND. CONST. art. 2, § 2 (same); N.J. CONST. art. II, § 3(a) (same). Whether the language enfranchising "citizens" implies that the franchise is exclusive to citizens and may not be extended to noncitizens by statute could be an open question in some states, but it is definitely intended to be exclusive in other states which replaced constitutional alien suffrage provisions with the citizenship qualification.

The constitutions of Massachusetts and New Hampshire refer to "inhabitants." See MASS. CONST. art. 1, § 9 ("All elections ought to be free; and all the *inhabitants* of this Commonwealth . . .") (emphasis added); N.H. CONST. art. 11 ("All elections are to be free, and every *inhabitant* of the state . . ."). Both states, however, have limited the franchise to citizens by statute. See MASS. ANN. LAWS ch. 51, § 1 (Law. Co-op. 1990) ("every citizen"); N.H. REV. STAT. ANN. § 654:1 (1986) ("Every inhabitant of the state . . . being a citizen of the United States."). There are no reported cases in Massachusetts or New Hampshire in which an alien has sued alleging that her constitutional right to vote has been abridged by statute. In Massachusetts, hostile precedent for such a suit exists in a case in which the Supreme Judicial Court stated that "if the people intended to impart a portion of their political rights to aliens, this intention ought not be collected from general words, which do not necessarily imply it, but from clear and manifest expressions, which are not to be misunderstood." Opinion of the Justices, 7 Mass 523, 525 (1811).

³⁷⁰ See N.Y. EDUC. LAW § 2590-c(4) (McKinney Supp. 1978-1979) (enfranchising, in community school board elections, registered voters and "every parent of a child attending any school under the jurisdiction of the community board of such district who is a citizen of the state"); see also *Ambach v. Norwick*, 441 U.S. 68, 81 n.15 (1979) (stating that New York State Education Commissioner has "interpreted the statute governing New York City's unique community school boards to permit aliens who are the parents of public school students to participate in these boards.") (citation omitted); Mary Anne Perez, *Quezada's Bid For Noncitizen Vote Debated*, L.A. TIMES, Mar. 19, 1992 (Nuestro Tiempo), at 1 (noting that voting eligibility of parents in school board elections in New York city spurs rally by noncitizen parents for enfranchisement in L.A. school board elections).

But noncitizen voting in Maryland is not (simply, at least) a naive throwback to nineteenth-century small-town life. For on March 31, 1992, Takoma Park, Maryland, a well-integrated city bordering the District of Columbia with a population of 16,700, formally amended its municipal charter to give all residents, regardless of citizenship, the right to vote, and run for office, in local elections. The charter change followed several months of excited political debate and controversy which spilled over into the Washington, D.C. area as a whole.³⁷⁵ The issue first arose when the Takoma Park Elections Task Force completed its 1990 city council redistricting process. The Task Force found that its new wards had equal numbers of *residents*, as required by law, but that some wards had far more eligible *voters* than others because some contained a large alien population. This imbalance focused attention on two facts: the votes of citizens in wards with high citizen populations were worth much less than votes of citizens in wards with high numbers of aliens³⁷⁶; and many city residents with all of the obligations of Takoma Park citizenship lacked the right to vote. The Task Force, by and large unaware of the rich history of alien suffrage in the United States, proposed to the City Council that it place on the November 5, 1991 ballot a referendum question on whether the citizens of Takoma Park favored extending local voting rights to noncitizens. On September 30, 1991 the Council voted to place the following non-binding question on the ballot: "Should the Takoma Park City Charter be changed to permit residents of Takoma Park who are not United States Citizens to vote in Takoma Park elections?"³⁷⁷

The referendum debate unleashed its share of xenophobia and prejudice, but the discussion was generally remarkable for its

³⁷⁵ See Melanie Howard, *Ballot Proposes Vote for Aliens*, WASH. TIMES, Oct. 30, 1991, at B1. ("The referendum has drawn outside attention to an election that normally would concern only the city of 16,000, and sparked passionate debate over who has the right to actively participate in government at its most local level.")

³⁷⁶ That is, the vote of a citizen in Ward A (with a low alien population) represented a smaller "share" of a Councilmember's electorate than the vote of a citizen in Ward D (with a high alien population). This disparity clearly violates the principle of political equality which Jonathan W. Still, in an important article calls "equal shares." See Jonathan W. Still, *Political Equality and Election Systems*, 91 ETHICS 375, 378 (1981) (defining "equal shares" as a situation in which each voter has the same share in the election as reflected in "what the voter voted on divided by the number of voters who voted on it").

³⁷⁷ City Council of Takoma Res. #1991-75 (introduced by Council member Leary) (on file with author).

Naturalization Service argued that alien suffrage "undermines the value of U.S. citizenship" and that five years "is not an unreasonable time to wait to be able to participate in our democracy."³⁸² He also made a slippery slope argument that "if local voting by noncitizens is allowed, state and federal voting could be next. Either there is a policy basis for noncitizens to vote, or there is not. If we open the door, it cannot be closed halfway."³⁸³

The November 5, 1991 noncitizen voting referendum passed by a vote of 1,199 to 1,107.³⁸⁴ Because the referendum was only advisory, debate continued. But on February 10, 1992, the Takoma Park City Council adopted, by a vote of five to one, a Charter Amendment removing the requirement that voters and candidates for public office in Takoma Park be U.S. citizens in order to participate in the city's biennial elections.³⁸⁵ In the meantime, Delegate John Morgan, who represents a district outside of Takoma Park, introduced a bill in the Maryland House of Delegates to prohibit noncitizen voting in local elections.³⁸⁶ On February 11, the House Committee on Constitutional and Administrative Law conducted a lengthy and impassioned hearing on the legislation. Bill proponents claimed that noncitizen voting would bring in a tide of unwanted immigrants, while Takoma Park and other noncitizen voting communities argued that this was a local question and home rule should not be invaded.³⁸⁷ On March 17, 1992, the bill was

vote are those who have broken the law of the country getting here." (quoting Cameron Whitman of the Federation for American Immigration Reform)); Alan C. Nelson, *Undermining Democracy in Takoma Park*, WASH. POST, Dec. 8, 1991, at C8 ("[T]he Takoma Park referendum did not distinguish between legal resident aliens and illegal ones."). Charter amendment advocates, however, dismissed this possibility. See Howard, *supra* note 375, at B1 ("If you were living in the shadows and you were frightened of being captured by the government, you wouldn't register your name on a public document." (quoting Leventhal)).

³⁸² Howard, *supra* note 375, at B1.

³⁸³ *Id.*

³⁸⁴ See Stephanie Griffith, *Hispanics Seek Wider Clout in D.C. and Va.: Takoma Park Referendum on Voting Eligibility Spurs Immigrants' Interest*, WASH. POST, Nov. 7, 1991, at D6.

³⁸⁵ See Notice of Amendment to the Municipal Charter of the City of Takoma Park (on file with author).

³⁸⁶ H.B. 445, 407th Leg., Reg. Sess. (Md. 1993). This bill was introduced January 27, 1993 and assigned to the Judiciary Committee. See *In the News: Md. Bill May Thwart Takoma Park Vote*, WASH. POST, Feb. 6, 1992, at M1.

³⁸⁷ See *Hearings on H.R. 665 Before the House of Delegates Comm. on Const. and Admin. Law* (Feb. 11, 1992) ("[This bill] threatens to take away our right and that of 5 other municipalities as home-rule governments to make such an important decision.") (statement of Paula Jewell, Takoma Park City Clerk); Letter of Walter

quency, and riot in immigrant communities, on both the east coast and the west coast, illustrate the dangers of excluding large numbers of people from political membership in their communities.³⁹¹ But it is no answer to say that members of these excluded groups should simply apply for United States' citizenship; their very alienation renders improbable their participation in the citizenship naturalization process, which is more of an affirmation of a sense of social belonging than a first step towards achieving this goal. The virtue of extending the vote in local elections to noncitizens is that it invites noncitizens to participate in, and learn about, American political culture and practices without immediately requiring the greater psychic break of surrendering one's given nationality. Presumably the taste of democratic citizenship that some aliens get from local voting will make them hunger for a greater role in our politics. If so, the practice of alien suffrage, sometimes derided as a threat to the naturalization process, can become once again, as it was in the last two centuries, a pathway to naturalized citizenship.

CONCLUSION

The old-fashioned democratic principles justifying local alien suffrage may find a new lease on life in the context of globalization of economic and social institutions. As the coherence of the nation-state is increasingly undermined by the global forces of economic and cultural production, the locality may become at once the individual's best hope for meaningful political participation and the world's best hope for counteracting the deracinating and depersonalizing effects of the global economic system. Thus, the traditional democratic arguments for alien suffrage, which are being revived by surges in immigration, are united with the contemporary human rights interest in making the right to participate in politics as mobile as markets for capital and labor. This convergence of local and

Diverse Group's Problems, WASH. POST, June 22, 1992, at A1; Barbara Vobejda, *Mexican Americans Stall on Journey to U.S. Mainstream*, WASH. POST, June 21, 1992, at A1.

³⁹¹ See Bill Boyarsky, *Leaders Speak, But No One is Listening*, L.A. TIMES, May 6, 1992, at B2 (noting that despite large number of immigrants from Latin American and Asian countries in East L.A., they have no representation and little voting power, which generates the kind of resentment expressed in the L.A. riots); Nell Henderson, *Power at Ballot Box Eludes D.C. Hispanics: Task Force Attempts To Bridge the Gap*, WASH. POST, May 5, 1992, at A1 (discussing a proposal to allow noncitizen vote in response to race riot in hispanic community); Raskin, *supra* note 201, at B7 ("People frozen out of democracy's circle learn to express their grievances and frustrations in other ways.").

all over the world comfortable with the idea of making voting rights mobile between nation-states.³⁹² If we ever approach that Kantian moment, when the world becomes an effective confederation of republican nation-states and the right to vote travels with the person, the U.S. Congress will have the Article I authority, under *Oregon v. Mitchell*,³⁹³ to adopt noncitizen voting as a policy for federal elections and possibly the Fourteenth Amendment enforcement authority under *Katzenbach v. Morgan*³⁹⁴ to do the same for state elections.³⁹⁵ Needless to say, such a moment is far off in the next century and likely depends upon the prior success of numerous decentralized local experiments with noncitizen voting all over the world.³⁹⁶

³⁹² See Alan C. Nelson, *Undermining Democracy in Takoma Park*, WASH. POST, Dec. 8, 1991, at C8 (explaining that letting noncitizens vote is a bad idea for reasons of public policy).

³⁹³ 400 U.S. 112 (1970).

³⁹⁴ 384 U.S. 641 (1966).

³⁹⁵ *Oregon v. Mitchell* established Congress's ample power, under Article I, to define and broaden the federal electorate by adopting eighteen as the voting age for federal elections. See *Oregon v. Mitchell*, 400 U.S. 112, 293 (1970). In *Katzenbach v. Morgan*, the Court upheld Congress's authority, under § 5 of the Fourteenth Amendment, to advance equal protection under the laws by extending the right to vote to all persons who had attended school in Puerto Rico at least through the sixth grade regardless of English language skills. See *Katzenbach v. Morgan*, 384 U.S. 641, 646-47 (1966). Significantly, the Court recognized this power despite acknowledging that such a rule was not required by § 1 of the Fourteenth Amendment and that New York's law requiring English language literacy was not necessarily in violation of the substantive commands of the Fourteenth Amendment. See *id.* at 656. Thus, the position that Congress can enforce equal protection by enacting federal and state alien suffrage is not in conflict with the argument made in Part III that § 1 of the Fourteenth Amendment does not require alien suffrage. At any rate, it is abundantly clear from *Morgan* that Congress could prohibit "the State[s] from denying to [the alien community] the right that is 'preservative of all rights.'" This enhanced political power will be helpful in gaining nondiscriminatory treatment in public services for the entire [alien] community." *Id.* at 652 (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). In *Morgan*, the Court thus articulated an extremely deferential standard of review for enforcement clause action by Congress. See *id.* at 653 ("It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did.") Clearly aliens are a suspect class whose vulnerability in the political system Congress could try to rectify by extending to them the vote. See also *Sugarman v. Dougall*, 413 U.S. 634, 646-69 (1973) (holding that aliens are a suspect classification).

Alien suffrage at all levels presumably could also be accomplished by way of an international treaty. See LAWRENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 226 (2d ed. 1988) ("Under the Supremacy Clause, it is indisputable that a valid treaty overrides any conflicting state law, even on matters otherwise within state control." (citing, *inter alia*, *Hauenstein v. Lynham*, 100 U.S. 483 (1880) (upholding a treaty establishing alien inheritance rights over a state law disqualifying aliens from inheriting))).

³⁹⁶ Reciprocal noncitizen voting may, however, be part of a political program